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Committee on the Rights of the Child
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Summary record of the 2087th (Chamber B) meeting
Held at the Palais des Nations, Geneva, on Thursday, 21 January 2016, at 3 p.m.

Chair: Mr. Mezmur

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The meeting was called to order at 3.05 p.m.

Consideration of reports of States parties (*continued*)

Combined third to fifth periodic reports of Kenya (continued) (CRC/C/KEN/3-5; CRC/C/KEN/Q/3-5 and Add.1)

1. *At the invitation of the Chair, the delegation of Kenya took places at the Committee table.*

2. **Ms. Karanu** (Kenya) said that a free 24-hour child helpline was in place. Child protection centres had been set up in selected areas of the country to provide vulnerable children with access to health care, food and education, as had child rescue centres to care for child victims of abuse, violence or neglect needing shelter and support, and further such facilities were under construction. Child protection units had also been set up in all police stations to ensure that the rights of children in conflict with the law were respected. Police officers dealing with children were specially trained and wore plain clothes. Gender violence recovery centres, run by NGOs and civil society organizations, operated alongside the State-run services.

3. **Mr. Muigai** (Kenya) said that, under the Constitution, men and women had equal rights and obligations and that gender discrimination was prohibited throughout the country's legislation. However, the composition, functioning and values of family units was a separate matter, beyond the reach of the Government.

4. **Mr. Masese** (Kenya) said that the State party had signed reciprocal agreements on the enforcement of international recovery of child support and family maintenance orders.

5. **Mr. Muigai** (Kenya) said that the recent overhaul of the judicial system would improve the enforcement of maintenance payment and welfare for vulnerable groups. A specialized family division of the High Court had been established to deal with issues such as divorce, adoption and maintenance. Its functions would be progressively devolved to regional councils. Persons who had formed common law marriages were now subject to provisions on the payment of maintenance in accordance with the Marriage Act of 2014, which covered various types of civil, religious and customary marriages, including polygamous unions which had in fact been legal in the State party since 1897. While public opinion had supported the amendment of the legal age for marriage to 18 years for boys and girls, it was not in favour of banning polygamy and the Government did not therefore envisage legislative changes in that regard in the near future. Monogamous marriages could only be converted into polygamous unions with the first wife's consent and, given the expense of providing for more than one wife, few persons entered polygamy in practice.

6. **Ms. Oguye** (Kenya) said that most children deprived of a family environment were placed in charitable children's institutions or statutory rehabilitation institutions on the basis of necessity and appropriateness. Currently, around 43,000 children resided in the 700 charitable children's institutions in the country. They were placed there on a court decision for a maximum period of three years, following which they were transferred to a family setting or adopted. In addition, many children were accommodated in unregistered facilities. Charitable children's institutions were registered and regulated by law, staff manuals were issued and reporting mechanisms were in place. The institutions were subject to monitoring by the National Council for Children's Services and to licence renewal every three years. They could be closed down if requirements were not met.

7. **Ms. Ayoubi Idrissi** asked whether all polygamous marriages were registered and what safeguards were in place for the first wife and her children.

8. **Mr. Cardona Llorens** said that a national law permitting polygamy could only be deemed non-discriminatory towards women if polyandry were also provided for. Children living in a polygamous environment necessarily developed particular views on gender relations and decisions concerning polygamy had therefore to take their non-material welfare into account.

9. **Mr. Muigai** (Kenya) said that polygamy was part of African tradition and the Government should not challenge it or interfere with family units, particularly where such structures did not impinge on child protection. The children of polygamous families were protected under the Islamic principles by which their parents led their lives. All forms of marriage could be registered in the State party but not all were in practice. While there were no plans to formulate new legislation relating to gender equality, much was being done to empower women and enable them to assert their rights.

10. **Ms. Khazova** asked why, in cases where it was clear that children would not return to their families, they were required to remain in the institution for three years. Could those children be placed with foster families or was there a shortage of such care? She would like further details on the monitoring and relicensing of charitable children's institutions, including the inspecting authority and the arrangements for children in institutions that were being monitored or closed down.

11. **Mr. Kotrane** (Country Rapporteur) asked whether investigations had been conducted into allegations of child sexual abuse, violence and bombing of civilians perpetrated by Kenyan peacekeepers in Somalia.

12. **Ms. Ayoubi Idrissi** asked how, in cases where the husband left an unregistered marriage, such a marriage could be proved and the paternity of any children recognized, particularly where the man denied it.

13. **Mr. Muigai** (Kenya) said that efforts were made to ensure that all marriages were registered and maintenance was collected in all relevant cases. Certain incidents of sexual exploitation of children by United Nations peacekeepers had been brought to the Government's attention and those cases were under investigation.

14. **Ms. Karanu** (Kenya) said that the State party had established a moratorium on international adoptions following reports of child trafficking for purposes of adoption. In 2015, the national adoption committee had been reconstituted and an expert committee was carrying out a review of the whole adoption process. The national committee would soon be considering the annual renewal of licences for domestic adoption for the five adoption organizations in the country and the Cabinet was expected to issue a decision on intercountry adoption by the end of January 2016.

15. **Mr. Muigai** (Kenya) said that Kenya was fully aware of its obligation under the Convention to ensure that children who could not be with their own families were placed as soon as possible in a safe environment, such as could be provided by adoption. However, the moratorium on international adoptions had been introduced until the system could be rendered more efficient, to ensure that international adoption was not facilitating trafficking.

16. **Ms. Oguye** (Kenya) said that child labour was one of the Government's main concerns, particularly given the existence of its worst forms in the country: in the mining sector, which had many children working in quarries, and in salt harvesting along the coast. Others did not attend school because their families preferred that they learn to look after animals or work in agriculture or domestic service, and some were involved in the sex trade. The Government had introduced a child labour policy which

was awaiting approval at Cabinet level. The Employment Act had already been amended to address child labour and allow inspections to be carried out to determine whether children were being employed in a particular location. The 2007 data on child labour indicated that 1.1 million children were in employment in the country.

17. **Ms. Onuko** (Kenya) said that Kenya had ratified the International Labour Organization Minimum Age Convention, 1973 (No. 138) and the Worst Forms of Child Labour Convention, 1999 (No. 182). The 2004 reform of the Employment Act had given a firm legal basis for the protection of children and prohibition of the worst forms of child labour. The Government's multisectoral and interministerial approach included help desks, work to map the extent of the problem, child labour committees and collaboration with civil society. If the child labour policy was accepted by the Cabinet, it would offer even greater protection, more programmes and increased funding. Inspections had been carried out to determine if children were being employed but it was difficult to conduct them in all regions of the country. With the introduction of free primary education, the number of children affected by child labour had dropped from 1.9 million prior to 2007 to 1.1 million currently.

18. **The Chair** said that, under the Employment Act 2007, it was illegal to employ a child below the age of 13 years. As the minimum age of employment was 16 and the Education Act only required that children attend school until the age of 14, it would seem that children aged between 14 and 16 years were not covered by the legislation in force. Would the State party consider introducing legislation to address that concern?

19. **Ms. Oguye** (Kenya) said that the issue of the alignment of legislation to cover that age group had been under discussion for some time. Amendments were being made to the Employment Act. Under both the Act and the Convention, regulations restricted the number of hours children under the age of 18 years could work and set out the terms and conditions of their employment. When it came to the worst forms of child labour, no child under the age of 18 was permitted to work in those fields.

20. **Mr. Muigai** (Kenya) said that the age of criminal responsibility should be examined, as proposed by the Committee, and efforts would be made to raise it from 8 to 12 years. The delegation appreciated the Committee's view that minors should be imprisoned only as a last resort and only if the circumstances were not detrimental to their well-being. The Persons Deprived of Liberty Act had been introduced in 2015 to regulate the conditions in which people, especially children, were held in custody. A task force had been set up to define the conditions in which children who were in prison or in custody with their mothers could be held, to ensure that standards did not fall below a minimum accepted level.

21. **Mr. Amoth** (Kenya) said that the 2013 devolution of health services had left the Government the task of formulating policy in that area and managing service delivery. Data from the Kenya Demographic and Health Survey indicated that the infant and maternal mortality rates had both decreased following devolution, which the Government viewed as an opportunity for the counties to prioritize their key concerns and allocate funds accordingly. To that end, infant and maternal mortality rates had been mapped and the Public Finance Management Act 2012 introduced.

22. Adolescents comprised 24 per cent of the population, representing around 10 million persons. The adolescent pregnancy rate had not changed since 2009 and remained around 8 per cent. Child marriage and sexual abuse of children remained common, mainly due to poverty, a lack of education and limited economic opportunities. There was also a lack of access to education on sexual health and contraceptives. The maternal mortality rate for adolescents was relatively high as a result of their physical immaturity for pregnancy and childbirth and inadequate access

to appropriate health care. The Ministry of Health had recently begun to collect disaggregated data on teenage pregnancies. In an attempt to address the problem, a presidential decree had been issued on the provision of free maternity services and the abolition of all associated fees, thus removing the financial barrier to obtaining appropriate health care. An adolescent sexual health policy had also been launched, involving multiple stakeholders, to provide more resources to address issues specific to that age group. In collaboration with the Ministry of Education, comprehensive sexual health classes were taught in schools and there was a policy in place to reintegrate adolescent girls who had given birth back into the education system.

23. Under article 26 of the Constitution, abortion was permitted only when the life of the mother was at risk. In that connection, a multisectoral task force had been set up in 2015 to identify the five main causes of maternal mortality. Drug abuse was a problem among adolescents, in particular because it increased the likelihood of them engaging in risky sexual behaviour. The Ministry of Health was therefore focusing on training health-care professionals on issues related to drug abuse, in order to equip them with specialist knowledge in that field. On the subject of HIV and AIDS, the curriculum for adolescents featured education on non-discrimination against people affected, and sexual education was part of the curriculum for all children. The number of HIV/AIDS-related deaths had fallen across all age groups in Kenya and care was available to all.

24. He said that the childhood immunization programme had generally been successful, with a coverage rate of 79 per cent, which was expected to increase. It was planned to introduce the measles, mumps and rubella vaccine in 2016. Sanitation was a very challenging issue: around 60 per cent of the population of Nairobi lived in slums, lacking basic water and sanitation infrastructure. A total of 30 billion Kenya Shillings had been allocated to improve the water and sanitation services.

25. **The Chair** said that he would like to know whether confidential HIV testing was available only to persons over the age of 18 years. Given the fact that adolescents were a sexually active age group, did the Government view such testing as important in reducing the incidence of HIV/AIDS? There had been outbreaks of cholera in nine counties in 2015. What efforts had been made to raise awareness on cholera and how successful had those efforts been?

26. **Ms. Oviedo Fierro** said that she would like to hear more about the special steps taken to combat maternal mortality. What was being done to eradicate ill-treatment of pregnant adolescents in health-care settings and to end discrimination against persons suffering from HIV and AIDS?

27. **Ms. Ayoubi Idrissi** said that she would like further information on the national vaccination campaign against neonatal tetanus, including its impact on neonatal and maternal mortality rates.

28. **Mr. Amoth** (Kenya) said that the Government had held consultations with the relevant stakeholders to discuss whether to provide confidential HIV testing and counselling facilities for young persons under the age of 18. However, it was still a contentious issue and more work remained to be done. Regarding cholera, the detection and treatment of the disease had slowly improved over recent years. However, poor water and sanitation facilities, particularly in urban informal settlements, had hindered progress and the incidence of cholera had increased in certain areas across the country. To address maternal mortality, the Government had provided free maternity health services for pregnant women, including in mobile maternity facilities in remote and rural areas, which had greatly improved overall access to appropriate maternity care. As to the ill-treatment of pregnant girls in medical establishments, the Government had recently developed a charter setting forth

patients' rights and had taken steps to better train health-care providers in order to curb such behaviour. More work was required to eliminate maternal and neonatal tetanus in all areas of the country. Although tetanus vaccinations had been provided to women and girls of childbearing age, the Catholic Church had opposed the vaccination campaign as it believed that the vaccine had been laced with contraceptives. National quality control tests had been conducted on random samples of the vaccine in order to appease such concerns and ensure the success of future vaccination campaigns.

29. **Mr. Masese** (Kenya) said that the National Commission on Human Rights had been tasked with promoting and protecting children's rights. While a dedicated commissioner for children's rights had yet to be appointed, additional resources had been provided to facilitate the Commission's work and a separate unit for children's issues had been established.

30. **Ms. Khazova** said that she would like further information on the obstacles that had prevented the appointment of a commissioner for children's rights.

The meeting was suspended at 4.30 p.m. and resumed at 4.50 p.m.

31. **Mr. Kotrane** asked what efforts had been made to implement the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act, particularly in the case of displaced persons living in the Rift Valley, and whether the State party intended to adopt the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the Kampala Convention). He also wished to know what measures had been taken to address the expropriation of land belonging to minority and indigenous groups, which had led to serious violations of children's rights. In that connection, he asked whether the State party had plans to adopt the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169).

32. **Ms. Khazova** asked what action had been taken to address the high number of indigenous girls who failed to attend school. She also wished to know what efforts had been made to reintegrate into society and guarantee access to education for girls who had left their homes to escape early marriage or female genital mutilation and were living in rescue centres.

33. **Mr. Muigai** (Kenya) said that all school-age children, including refugee children, had access to basic education and attended human rights and citizenship lessons. Pupils also had access to a number of sporting, recreational and cultural facilities and activities. There was no discrimination in the national school application process and children wishing to enrol were not required to show their birth certificate. Proof of age was only required upon taking school leaving exams.

34. The Government remained fully committed to its international refugee obligations and had implemented special policies for refugee children to promote their integration into Kenyan society. However, the country faced an increasingly large flow of refugees and had been experiencing difficulties with refugee management as well as security issues, including the radicalization of children and young persons by terrorist groups. Every effort was being made to stabilize the situation quickly and find a lasting solution.

35. There had been a series of resettlement programmes targeting different groups of internally displaced persons over recent years. Unfortunately, while numerous measures had been taken to encourage permanent resettlement, many persons had left their new homes and moved back to informal settlements. Indigenous peoples were only resettled when they were found to have moved into areas of national ecological interest, such as forests and woodland containing important national supplies of water or resources. In those cases, a variety of measures were taken to ensure that children's

rights remained unaffected and that indigenous children, including girls, had access to education.

36. The National Commission on Human Rights was an independent body and could appoint its members freely. The Government was in favour of there being a dedicated commissioner for children's rights. It would be extremely difficult to reintegrate girls living in rescue centres into their home communities or families while cultural attitudes remained unchanged. Numerous measures had therefore been taken with the support of NGOs and civil society to address harmful cultural norms and eradicate the practices of female genital mutilation and early marriage. More progress, however, remained to be made in that regard.

37. **The Chair** wished to know what efforts the Government was making to reduce regional disparities in school enrolment, attendance and completion.

38. **Ms. Khazova** asked what steps were being taken to monitor and improve the quality of the education provided by Bridge International Academies in Kenya.

39. **Mr. Muigai** (Kenya) said that the Government firmly intended to ensure that regional disparities in school enrolment were eliminated over time through coordinated action by the national Government and local authorities. Access to and the quality of education in informal settlements in urban areas was a genuine concern which was being addressed by the Government and its development partners. The Government would work with the Committee to fashion appropriate responses to the various difficulties. His delegation would look into the quality of private education and would submit a written response.

40. **Mr. Cardona Llorens** asked what was being done to cater to the needs of children with disabilities who had been abandoned by their families and who were not cared for in charitable child institutions (CCIs). What education was available for children who were albinos or for children with mental disability? He further wished to know what specific assistance was given to the over 99,000 children with disabilities who were not in school and what inclusive education for children with disabilities was available in ordinary schools.

41. **The Chair** requested information on progress in monitoring the compliance of the large number of unregistered CCIs with minimum standards, best practices and the national guidelines on alternatives to family care.

42. **Ms. Oguye** (Kenya) said that it was not government policy to institutionalize child care and indeed CCIs would not be a suitable environment for many children. Although little headway had been made in the registration of those institutions, their closure was not a viable option, because their young residents would then have no safe place to live. Alternatives to family care took the form of adoption, placement with relatives, foster care and *kafalah*. Over the previous year, the Government had conducted awareness-raising campaigns in 11 counties in order to sensitize Kenyans to the need to offer such alternative care. It also encouraged supported independent living for child-headed families; that meant that children without parents received regular visits from adults from the community to which they belonged in order to check that they were coping.

43. **Ms. Karanu** (Kenya) said the National Council for Persons with Disabilities, which had been established in 2003, assisted children with disabilities. Every government department had to mainstream persons with disabilities in its action and activities. The delegation would welcome the Committee's views and recommendations on how to tackle the huge challenge of caring for children with serious disabilities, especially in view of the cost of providing round-the-clock services for them. In fact, their numbers could be greater than those reflected in the

Government's statistics, because many of those children were hidden by their parents, since their disability was regarded as a shameful curse. In order to change such prevailing attitudes, the Government was conducting an awareness-raising campaign to promote the idea that disability was not synonymous with inability and that, if a child with disability was given a chance, he or she could do well in life.

44. **Ms. Oviedo Fierro** wished to know how many AIDS orphans there were in Kenya and whether there were any long-term programmes to fund their studies or enhance their quality of life.

45. **Mr. Muigai** (Kenya) undertook to provide a written reply to that question.

46. **Ms. Khazova** thanked the delegation for the very open and constructive dialogue and looked forward to receiving written replies to the unanswered questions. She noted that there had been a significant improvement in the protection of children's rights in general. On the other hand, the discussion had shown that old sociocultural stereotyping was still the root cause of many problems.

47. **Mr. Muigai** (Kenya) said that his delegation had been impressed by the depth of the Committee's understanding of the challenges faced by his country in safeguarding children's well-being. His Government took its obligations under the Convention very seriously. He therefore looked forward, in the State party's next periodic report, to describing the exemplary steps which Kenya had taken to secure a dignified life for children.

48. **The Chair** urged the State party to sign and ratify the Optional Protocol on the Rights of the Child on a communications procedure.

The meeting rose at 5.50 p.m.